

SEP 14 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALLA VALADMIROVNA DAVIS,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 05-72070

Agency No. A076-370-345

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Argued and Submitted September 2, 2009  
San Francisco, California

Before: WALLACE, O'SCANNLAIN, and KLEINFELD, Circuit Judges.

Alla Valadmirovna Davis seeks review of a decision of the Board of Immigration Appeals ("BIA") denying her application for asylum. As the facts are known to the parties, they will not be repeated here, except as necessary to our decision.

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Davis filed her application for asylum over six years after entry into this country. Such applications must be “filed within 1 year after the date of the alien’s arrival in the United States,” 8 U.S.C. § 1158(a)(2)(B), except in cases where there are “extraordinary circumstances relating to the delay in filing an application,” *id.* § 1158(a)(2)(D). Ineffective assistance of counsel may constitute extraordinary circumstances. *See* 8 C.F.R. § 1208.4(a)(5).

The “Real ID Act of 2005 restores our jurisdiction over constitutional claims or questions of law.” *Ramadan v. Gonzales*, 479 F.3d 646, 650 (9th Cir. 2007) (per curiam) (internal quotation marks and citation omitted). We have held that extraordinary circumstance determinations are a reviewable mixed question of law and fact, so long as the underlying facts are undisputed. *Husyev v. Mukasey*, 528 F.3d 1172, 1178-79 (9th Cir. 2008). Here, the BIA concluded that Davis had presented insufficient evidence to support her claim of ineffective assistance of counsel. We lack jurisdiction to review such determinations, especially in a case such as this where the underlying facts are disputed.

DISMISSED.